IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 360 of 2004.

Date of decision: 28.12.2005.

Smt. Bhango alias Bhago ... Appellant

Versus

Lala & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1] Yes.

For the appellant: Mr. Ajay Sharma, Advocate.

For the respondents: Mr. G.R. Palsra, Advocate, for respondent No.1.

V.M. Jain, J. (Oral):

This Regular Second Appeal has been filed by the plaintiff - appellant against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiff was dismissed by the trial Court and the appeal filed by her was also dismissed by the learned Additional District Judge.

Smt. Bhango alias Bhago had filed a suit for declaration with a consequential relief of injunction and in the alternative, for possession against the defendants, with the allegations that the plaintiff was the owner in joint possession and joint ownership along with the proforma defendants in respect of the suit land and that the plaintiff was the owner in joint possession to the extent of 1/5th share. It was further

[1]Whether reporters of Local Papers may be allowed to see the judgment?

alleged that defendant No.1 had no right, title or interest in the suit land and that defendant No.1 in connivance with the revenue authority got the name of the plaintiff deleted from the revenue record in the jamabandi for the year 1982-83 and got himself recorded as owner. It was alleged that the said entries were wrong and illegal and not binding on the rights of the plaintiff, since the said entries were the result of fraud committed by defendant No.1. It was alleged that the said entries continued in the subsequent jamabandies. It was alleged that infact defendant No.1 was never inducted as a tenant by the plaintiff in the suit land. It was further alleged that the plaintiff attained majority on 26.6.1967 and the entries showing defendant N o.1 as tenant were wrong and illegal. It was alleged that the plaintiff never appeared nor admitted before the Compensation Officer and had not made any statement before the Compensation Officer and as such, the order passed by the Compensation Officer dated 2.12.1970 and subsequent mutations on the basis of the said order were wrong and illegal and void abinitio. It was alleged that the plaintiff came to know about the mischief and fraud only in May, 1995, when the consolidation started in the village and it was found that the name of the plaintiff did not appear in the revenue record.

The suit was contested by defendant No.1 by filing written statement, alleging therein that defendant No.1 was owner in possession of the share of the plaintiff and that defendant No.1 was inducted as a tenant by the plaintiff in the suit land and subsequently, defendant No.1 had filed application before the Land Reforms Officer for acquiring the proprietory rights, which were conferred upon him and the defendant No.1 had become owner in possession of the suit land under the orders of the Compensation Officer. It was alleged that the plaintiff

had given a statement that she had no objection to the conferment of the proprietory rights upon defendant No.1 and now she was estopped from filing the present suit by her own act and conduct.

After hearing both sides and perusing the record, the learned trial Court dismissed the suit of the plaintiff, holding that the entries in the revenue record were corrected through a lawful order passed by the competent authority and the same had become final and further holding that the plea taken by the plaintiff that she had not inducted defendant No.1 as tenant could not brush aside the order of the Compensation Officer, which had become final. Resultantly, the suit was dismissed. The appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, upholding the findings of the trial Court. Aggrieved against the same, the plaintiff filed the present Regular Second Appeal in this Court.

Notice was ordered to be issued to the respondents and the records were also requisitioned.

After hearing the learned counsel and perusing the record, in my opinion, there is no merit in this appeal and the same is liable to be dismissed. As referred to above, both the Courts below found it as a fact that the plaintiff herself had inducted defendant No.1 as a tenant over the suit land and by authority of law, defendant No.1 had become the owner of the suit property under the orders of the Compensation Officer. It was also found by the Courts below that the change in the revenue record had taken place in accordance with law and no fault could be found with the same and the plaintiff now cannot be allowed to urge that she had not inducted defendant No.1 as a tenant. In my opinion, these findings recorded by the Courts below are findings of fact, based on evidence and

do not call for any interference from this Court in the present Regular Second Appeal, especially when nothing has been pointed out before me to show that there was any misreading of evidence or that any material piece of evidence was ignored by the Courts below, while giving these findings.

The contention of the learned counsel for the plaintiff – appellant that the plaintiff – appellant being a minor could not have inducted defendant No.1 as a tenant, in my opinion, cannot be accepted, especially when this plea was never taken by the plaintiff – appellant at any earlier stage. Furthermore, nothing has been pointed out before me to show that being a minor, the plaintiff – appellant could not have inducted defendant No.1 as a tenant over the suit property through her guardian or otherwise. Furthermore, the next contention of the learned counsel for the plaintiff – appellant that the plaintiff – appellant being a minor, defendant No.1 could not have acquired the ownership over the suit property, in my opinion, is devoid of any force. Admittedly, the plaintiff had become major at the time when the Compensation Officer had passed necessary orders conferring the proprietory rights upon defendant No.1 on the basis of the revenue record showing him as a tenant over the suit property under the plaintiff. Since the plaintiff had already attained the majority at the time when the proprietory rights were conferred upon defendant No.1, in my opinion, it could not be said that the order passed by the Compensation Officer conferring the proprietory rights upon defendant No.1 suffer from any illegality. On the other hand, the order passed by the Compensation Officer and the mutation which was sanctioned in pursuance thereof and the revenue

entries which were recorded on that basis were perfectly legal and valid and no fault could be found with the same.

In view of the detailed discussion above, in my opinion, there is no scope for interfering in the present Regular Second Appeal, especially when no question of law, much less a substantial question of law, arises for determination in this appeal. Hence, the present appeal is dismissed.

CMP No. 708 of 2004:

In view of the dismissal of the main appeal, the stay order dated 6.12.2004 shall stand vacated and the application stands disposed of.

(V.M. Jain),
Judge

December 28, 2005
(BSS)